

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCISCO MEDINA CASTENEDA,

Defendant.

CIV. NO. S-11-0556 EJG

CR. NO. S-03-0549 EJG

ORDER GRANTING MOTION FOR  
RECONSIDERATION AND DIRECTING  
UNITED STATES TO FILE A  
RESPONSE

This matter is before the court on defendant's motion for reconsideration of the court's August 11, 2011 order denying his § 2255 motion as untimely. Defendant seeks reconsideration, pointing out that his post-conviction motion was filed within the one-year limitations period when measured from the date on which his petition for certiorari to the Supreme Court was denied. Defendant is correct. At the time the court denied the § 2255 motion it was unaware defendant had sought certiorari from the Supreme Court. That fact is not mentioned in any of his § 2255 documents, nor does it appear on the official district court docket. The information available to the court revealed only

1 that defendant's conviction and sentence had been affirmed by the  
2 Ninth Circuit in an unpublished memorandum disposition filed July  
3 2, 2009. Measured from that date, his February 28, 2011 § 2255  
4 motion was untimely. However, in seeking reconsideration  
5 defendant has attached a letter received by his appellate  
6 attorney from the Clerk of The Supreme Court in which the court  
7 confirms that an order was entered March 1, 2010 denying  
8 defendant's petition for writ of certiorari.

9 In view of this evidence, defendant's § 2255 motion, filed  
10 February 28, 2011, was timely, having been filed within one year  
11 of March 1, 2010, the date on which the judgment of conviction  
12 became final. Accordingly, the motion for reconsideration is  
13 GRANTED, and defendant's § 2255 motion is reinstated. The  
14 government is directed to file a response to the motion within 30  
15 days from the date of this order.<sup>1</sup> Defendant may file a reply  
16 within 30 days after receipt of the government's response. The  
17 matter will stand submitted upon receipt by the court of the  
18 final brief.

19 IT IS SO ORDERED.

20 Dated: September 26, 2011 /s/ Edward J. Garcia  
21 EDWARD J. GARCIA, JUDGE  
22 UNITED STATES DISTRICT COURT

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23 <sup>1</sup> The court notes that the government did not comply with the previous briefing schedule  
24 issued by the court. Prior to its order denying the motion as untimely, the court issued a notice  
25 on March 9, 2011, directing the government to file a response to the § 2255 motion. None was  
26 forthcoming. The government is directed to comply with the instant order by filing a timely  
response.